

CVC.25699

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**BROOKE ASHTON TABOR,
Individually and a/n/f KENNEDI
TABOR,**

Plaintiff,

VS.

**LA FITNESS and PRO RESULTS
#45767,**

Defendant.

§
§
§
§
§
§
§
§
§
§

5:21-cv-217

CIVIL ACTION NO. _____

DEFENDANT FITNESS INTERNATIONAL, LLC'S NOTICE OF REMOVAL

Defendant **FITNESS INTERNATIONAL, LLC** ("Defendant"), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, files this Notice of Removal.

I. INTRODUCTION

1. This removal is based on diversity jurisdiction. Plaintiff Brooke Ashton Tabor ("Plaintiff") seeks redress from Defendant for injuries her daughter allegedly suffered while at Defendant's facility located at 522 West 1604 North, San Antonio, Texas 78251. Plaintiff alleges her daughter was injured due to an unreasonably dangerous condition or defect on the premises but does not identify the allegedly dangerous condition or defect in her petition.

2. Plaintiff is now, and was at the time of removal, and at the time of the filing of the instant lawsuit, a citizen of Texas.

3. In contrast, Defendant is now, and was at the time of removal, and at the time of the filing of the instant lawsuit, a California limited liability company with its principal place of business in California. The citizenship of a limited liability company such as Fitness International, LLC is determined by the citizenship of its members, not by the state where the entity was

organized. *See Tewari De-Ox Systems, Inc. v. Mountain States/Rosen, LLC*, 757 F.3d 481, 483 (5th Cir. 2014).

4. Defendant has three members: (1) LAF, Inc.; (2) The Seidler Company, LLC; and (3) Seidler Fitness Holdings II, LP:

- a. LAF, Inc. is incorporated in the State of California with its principal place of business in Irvine, California. LAF, Inc. is a citizen of California.
- b. The Seidler Company, LLC is a Delaware limited liability company with its principal place of business in Marina del Rey, California. The Seidler Company, LLC has three members, all of whom are individuals who are domiciled in the State of California. The Seidler Company, LLC is a citizen of California.
- c. Seidler Fitness Holdings II, LP is a Delaware limited partnership with a principal place of business in Marina del Rey, California. Seidler Fitness Holdings II, LP has one (1) general partner, and one hundred one (101) limited partners. The general partner of Seidler Fitness Holdings II, LP is The Seidler Company LLC, a citizen of California. The one hundred one (101) limited partners of Seidler Fitness Holdings II, LP consist of ninety-eight (98) individuals and three (3) entities: (i) Cressey Family Partnership; (ii) Seidler North, LP; and (iii) Pain in the Donkey, LLC.
 - i. The ninety-eight (98) individuals who are limited partners of Seidler Fitness Holdings II, LP are domiciled in, and citizens of, the States of California, Idaho, Massachusetts, New Jersey, and Virginia.
 - ii. Cressey Family Partnership consists of individuals who are domiciled in, and citizens of, the State of Illinois.
 - iii. Seidler North, LP is a Delaware limited partnership. The general partner of Seidler North, LP is The Seidler Company, LLC, whose principal place of business is Marina del Rey, California. The limited partners of Seidler North LP are domiciled in, and citizens of, the State of California.
 - iv. Pain in the Donkey LLC is a California limited liability company whose members consist of (i) six (6) individuals who are domiciled in, and citizens of, the State of California, and (ii) The Pain in the Donkey 2018 Irrevocable Trust, which is domiciled in South Dakota

5. In addition, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff's First Amended Petition pleads, ". . . Plaintiff seeks monetary relief, the maximum of which is over \$100,000.00 but not more than \$200,000.00."

6. Defendant filed its Notice of Removal within thirty days of service of Plaintiff's First Amended Petition (February 3, 2021). This action has been on file for less than one year.

II. BASIS FOR REMOVAL: DIVERSITY JURISDICTION

A. Diversity Jurisdiction Exists

7. Removal is proper because this lawsuit involves a controversy between citizens of different states. 28 U.S.C. 1332(a)(1). Specifically, Plaintiff is now, and was at the time of removal, and at the time of the filing of the instant lawsuit, a citizen of Texas. In contrast, Defendant is now, and was at the time of removal, and at the time of the filing of the instant lawsuit, a California limited liability company. No member of Fitness International, LLC is a citizen of Texas as discussed in more detail above. The citizenship of a limited liability company such as Fitness International, LLC is determined by the citizenship of its members, not by the state where the entity was organized. *See Tewari De-Ox Systems, Inc. v. Mountain States/Rosen, LLC*, 757 F.3d 481, 483 (5th Cir. 2014). Thus, complete diversity of citizenship between the parties exists.

8. In addition, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. 28 U.S.C. §§ 1332, 1441. Specifically, Plaintiff's Original Petition seeks monetary relief of "over \$100,000.00 but not more than \$200,000.00."

B. Removal Is Timely

9. Defendant was first served with Plaintiff's First Amended Petition on February 3, 2021. Defendant filed its Notice of Removal on March 4, 2021, within thirty days after service. 28 U.S.C. § 1446(b)(1) (*See* Doc. 1). Thus, removal of this action is timely.

III. COMPLIANCE WITH REMOVAL PROCEDURES

10. Attached to or filed with Defendant's Notice of Removal (Doc. 1) were the following documents required by 28 U.S.C. § 1446(a) and S.D. TEX. LOCAL RULE 81 (these documents are hereby incorporated by reference in all respects):

- A. Civil Cover Sheet (JS 44);
- B. Supplement to Civil Cover Sheet (JS 44);
- C. Defendant's List of Attorneys Involved in the Case;
- D. Defendant's Index of Documents;
 - 1. State Court Docket Sheet;
 - 2. Plaintiff's Original Petition, filed January 27, 2021;
 - 3. Plaintiff's First Amended Petition filed January 29, 2021; and
 - 3. Citation and Return of Citation.

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 124(b)(2) and 1441(a) because the United States District Court for the Western District of Texas, San Antonio Division, embraces Bexar County, Texas, where the state court action was filed and is currently pending. Specifically, Plaintiff filed suit in the 73rd Judicial District Court of Bexar County, Texas, Cause No. 2021CI01738.

12. Defendant filed a copy of its Notice of Removal with the clerk of the state court in which the state court action was pending.

WHEREFORE, PREMISES CONSIDERED, Defendant Fitness International, LLC requests this action be immediately and entirely removed upon filing of this Notice of Removal to the United States Court for the Western District of Texas, San Antonio Division, and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

**FLETCHER, FARLEY, SHIPMAN
& SALINAS, L.L.P.**

/s/ Jeffrey D. Smith

DOUGLAS D. FLETCHER

State Bar No. 07139500

Southern District Bar No. 56262

Email: doug.fletcher@fletcherfarley.com

JEFFREY D. SMITH

State Bar No. 24063008

Southern District Bar No. 1515479

Email: jeffrey.smith@fletcherfarley.com

9201 N. Central Expressway, Suite 600

Dallas, Texas 75231

(214) 987-9600 (office)

(214) 987-9866 (telecopier)

**ATTORNEYS FOR DEFENDANT
FITNESS INTERNATIONAL, LLC**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument was electronically filed via the Court's CM/ECF system and a true and correct copy of same was delivered to all counsel of record in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on this the 4th day of March, 2021.

/s/ Jeffrey D. Smith

JEFFREY D. SMITH